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siderable alteration in procedure, but concomitantly a change in substantive law has resulted.²⁷

B. L.

RESCISSION OF A STOCK DIVIDEND ALREADY DECLARED, AND
RESULTING JURAL RELATIONS

The rule that cash dividends once declared and published are irrevocable is well established,¹ but a new situation has arisen in the recent case of *Staats v. Biograph Co.*² In this case a dividend of stock, having been declared and published, was rescinded. The declaration and publication of a cash dividend creates certain duties to pay a sum certain which constitutes a debt at common law. The resolution in the instant case created no debt, as it reserved to the directors the option of paying in cash or paying in stock. Such an obligation is not an obligation to pay a sum certain. Where one is bound by a covenant to do one of two things, then, in an action by the covenantee, the measure of damages is estimated by the loss engendered by a failure to do that which is least detrimental. The court followed this theory, citing *Robinson v. Robinson*.³

A stock dividend may properly be declared in two different cases. First, a corporation, instead of distributing its surplus in the form of cash dividends, may in accordance with state statutes add to the amount of its capital, and distribute the shares representing the increase among the shareholders. The property of the corporation is not increased or diminished by such a dividend.⁴ Second, a stock dividend may be declared payable in

²⁷ Compare the development that has occurred with respect to the interest acquired by the holders of easements under oral licenses and oral agreements. See note in (1911) 25 HARV. L. REV. 191; *Gilmore v. Armstrong* (1896) 48 Neb. 92; *Uncanoonuck Road Co. v. Orr* (1893) 67 N. H. 541; *Arbaugh v. Alexander* (1911) 151 Ia. 552.

¹ Morawetz, *Corporations*, Vol. I, sec. 445: "A dividend properly declared by the directors of a corporation cannot subsequently be revoked. Those persons who were shareholders on the books of the company at the time when the dividend was declared have a legal claim against the company for the payment of the amount of the dividend." See also Taylor, *Corporations* (5th ed.) sec. 568; Machen, *Modern Law of Corporations*, Vol. II, sec. 1358; Marshall, *Corporations*, sec. 283.

² (1916) 236 Fed. 454.

³ (1851) 1 De G. M. & G. 247.

⁴ *Green v. Bissell* (1907) 79 Conn. 547; *Williams v. W. U. Tel. Co.* (1883) 93 N. Y. 162.

shares which have been purchased by the company. It has been asserted that such stock dividends should be irrevocable in like manner as cash dividends.⁵ When the stock dividend involves only an increase of the company's capital, until the formalities which are required by law are completed, the company may revoke the dividend.⁶

The court recognized the well-settled rule in regard to cash dividends, and relied chiefly on *Terry v. Eagle Lock Co.*⁷ and *Dock v. Schlichter Jute Cordage Co.*⁸

The court in the former case referred to the petitioner's right as a "mere naked right which he might waive without losing anything, and might enforce without gaining anything." It is submitted, however, that while it is true that the value of the property of the corporation is not increased or diminished by the declaration of the stock dividend, still, its liabilities, actual and potential, are increased *pro tanto* in relation to the shareholders. The actual value of the holdings of the shareholders in the aggregate remains unchanged, though the jural relations differ. Before the stock dividend is declared, shareholders have only a right that the directors shall exercise good faith in declaring or refraining from declaring a dividend. After a stock dividend is declared, the shareholders have a right to a determinate amount of stock certificates, providing statutory formalities are complied with, while before such a dividend is declared they are under a disability to claim any definite amount of either stock or dividends. When a large amount of stock, representing sur-

⁵ Machen, *Modern Law of Corporations*, Vol. I, sec. 601, citing *Dock v. Schlichter Jute Cordage Co.* (1895) 167 Pa. St. 370, which held that a resolution adopted by the directors of a corporation distributing among the shareholders shares of stock of the company, which had been purchased by the company out of its earnings, cannot be subsequently rescinded where it is *not* shown that such distribution would be injurious to the business of the company. See also *City of Allegheny v. Pittsburgh, etc.*, Ry. (1897) 179 Pa. St. 414; *Green v. Bissell*, *supra*.

⁶ Machen, *op. cit.*, citing *Terry v. Eagle Lock Co.* (1879) 47 Conn. 141.

⁷ (1879) 47 Conn. 141. This case cannot too strongly be relied upon to support the decision in the principal case, inasmuch as the plaintiff was guilty of laches. The court says: "The petitioner has by his silence acquiesced in the transactions of which he complains, by his conduct and implied assent he has waived any rights which might once have been his. . . . Lapse of time creates an equitable estoppel." Story, *Eq. Jur.*, sec. 1539a.

⁸ (1895) 167 Pa. St. 370.

plus earnings, is distributed, it is no mere dilution of stock held by the shareholders. The value of the stock is based on earning power and general economic conditions. As a practical matter, a potential claim to an undivided surplus would seem less desirable than a stock dividend representing such a surplus.

The court refers to *Dock v. Schlichter Jute Cordage Co.*, which, negatively speaking, is an important persuasive precedent. There it was not shown that the stock dividend was detrimental to the corporation, and it was held to be irrevocable. The court does not pass on the question whether or not the dividend would have been held revocable if the company had faced a difficult financial situation such as confronted the corporation in the principal case during the European war. However, in a dictum, it does intimate that the dividend might be revoked.⁹

Where dividends have been illegally declared under a misapprehension of the existence of profits, they may be revoked, even after payment to the stockholders, on the theory of mutual mistake.¹⁰ Courts hesitate to enforce stockholders' rights where such a policy would embarrass the corporation.¹¹ There is no inevitable necessity in deciding that a stock dividend is revocable or irrevocable in a situation analogous to the one presented in the principal case. It appears that the court took a view in accord with sound business policy.

G. S. JR.

POWER OF PATENTEES TO IMPOSE RESTRICTIONS BY NOTICE.

Two decisions of widespread application and interest concerning limitations imposed by notice upon purchasers of patented articles, have very recently been rendered by the Supreme Court of the United States.

In the case of *Straus v. Victor Talking Machine Co.*¹ it was sought to enjoin the owners of a department store from selling Victor talking machines below a certain price. A "license

⁹ "It is believed that, when there has been no such appropriation as that above mentioned, a company by its board of directors, in a proper case and for cause, may rescind a resolution declaring a dividend, as where owing to destruction of a plant by fire immediately following such resolutions."

¹⁰ *Grant v. Ross* (1896) 100 Ky. 44.

¹¹ *Beers v. Bridgeport Spring Co.* (1875) 42 Conn. 17.

¹ (April 9, 1917) U. S. Sup. Ct., Oct. Term, 1916, No. 374.